IN THE HICH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Misc. Application No. 552of 2005

Umesh Agrawal
S/o Jagdish Saran Agrawal
Proprietor Agrawal & Company
R/o Mahesh Nagar Colony (Nawabi Raod)
Haldwani (Nainital) … Applicant

Versus

1. State of Uttaranchal
2. Addl. Civil Judge (J.D.) / J.M. Kashipur,
   Udham Singh Nagar
3. Cheda Lal
   S/o Puran Singh
   R/o Moh. Adarsh Nagar, Sultanpur Patti,
   Police Station – Bazpur,
   Udham Singh Nagar … Respondents

Shri Amrish Agrawal & Shri Bhupendra Singh Negi, learned counsel for the applicant.
Shri G.S. Sandhu, learned A.G.A. for the State

Hon'ble J.C.S. Rawat, J.

Heard learned counsel for the parties and perused the record.

This petition u/s 482 Cr.P.C. has been filed for setting aside the summoning order dated 10.06.2005 passed by the learned Addl. Civil Judge (J.D.)/J.M., Kashipur, Udham Singh Nagar in criminal case no. 494 of 2005, Cheda Lal Vs. Umesh Agrawal.

A complaint was filed before the court below wherein it has been alleged that on 27.02.2005, the applicant was going near to the house of the complainant. When he saw the complainant, the applicant returned back by the car and came to the complainant and abused him and demanded the payment. He further stated that he had given notice for the payment and the complainant is not making his entire

payment. On hearing this, the applicant became angry and he had beaten the complainant. The complainant examine himself u/s 200 Cr.P.C. and he examine the witnesses u/s 202 Cr.P.C. After recording the statement, the Magistrate has taken the cognizance on 10.06. 2005.

I have heard learned counsel for the parties and learned A.G.A.

Perusal of the record it reveals that there is a dispute with regard to the payment which is to be made by the complainant to the applicant. It is the case of the applicant that he had paid entire amount and only an amount of Rs. 7875/- is balance towards the complainant. It was further pointed out that the learned Magistrate had not put the question to the complainant or his witnesses to ascertain the veracity of the incident. It is the duty of the Magistrate to ensure as to whether the case is probable and whether the case is concocted or correct one. The learned Magistrate should have put questions to the witnesses as well as to the complainant. The learned counsel for the applicant has referred the decision of the Hon'ble Apex Court in M/s Pepsi Food Ltd. Vs. Special Judicial Magistrate J.T. 1997(8) S.C. p/705, in which it has been held as under:-

> "Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support

thereof and would that be sufficient for the complainant to succeed in bringing charge home to accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

The above proposition of law clearly emphasizes that the Magistrate, while taking the cognizance, should scrutinize the evidence and put the questions to all the witnesses as well as to the complainant.

The evidence reveals that there is a dispute with regard to the payment of the money and it has been indicated that the incident took place on 10.06.2005 and it is also a case u/s 323 I.P.C. Perusal of the order clearly shows that the Magistrate has mechanically recorded the evidence u/s 200 & 202 Cr.P.C. & passed the cognizance order. Perusal of the sworn statement recorded by the Magistrate reveals that he had not examined the veracities by putting the question to the complainant as well as to his witnesses. It was the bounded duty of the Magistrate to call for the entire records pertaining to the said transition. After considering the veracity, the Magistrate should have taken the cognizance.

In view of the aforesaid forgoing, the cognizance order is bad in law and is liable to be set aside.

The petition is allowed. Order dated 10.06.2005 passed by the learned Judicial Magistrate, Kashipur, Udham Singh Nagar in criminal case no. 494 of 2005 is set aside. The case is remanded back to the learned Magistrate. The Magistrate is

directed to recall the witnesses afresh and also to examine the record with regard to the payment of the parties and thereafter the Magistrate is directed to put the question with regard to the veracity of the incident and thereafter pass the appropriate order in accordance with law.

(J.C.S. RAWAT, J.)

30th August, 2005
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